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No. 81-1859

In the Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF ILLINOIS, PETITIONER

v.

RALPH LAFAYETTE

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING REVERSAL

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QUESTION PRESENTED

Whether the Fourth Amendment permits law enforcement officers, following a lawful custodial arrest, to conduct a warrantless search of an arrestee's purse at the stationhouse in the course of booking him on criminal charges.

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INTEREST OF THE UNITED STATES

This case presents an important and recurring question under the Fourth Amendment concerning the permissibility of warrantless searches of the personal effects of an arrestee, conducted at the stationhouse by law enforcement officers as part of a custodial booking procedure. Although this is a state prosecution, similar search practices are undertaken in connection with federal arrests, and questions regarding the proper scope of searches of an arrestee's effects undertaken in the course of processing the arrestee for incarceration arise frequently in federal prosecutions. Accordingly, the issues presented by this case

are of substantial interest to federal law enforcement officers and prosecutors.

STATEMENT

Respondent was indicted in the Circuit Court of Kankakee County, Illinois, on a charge of unlawful possession of amphetamine, in violation of Ill. Ann. Stat. ch. 56½, § 402(b) (Smith-Hurd Cum. Supp. 1982) (J.A. 2). The amphetamine was discovered on September 1, 1980, in the course of a warrantless search of respondent's purse following his arrest for disturbing the peace. Although respondent did not contest the validity of his arrest, he moved to suppress the amphetamine on the ground that the search of his purse violated the Fourth Amendment (J.A. 4). The trial court, without explanation, granted respondent's motion (J.A. 22). On the State's appeal, the Appellate Court, Third District, affirmed the suppression order (J.A. 25-30); thereafter, the Illinois Supreme Court denied the State's petition for leave to appeal (J.A. 31).

1. The evidence at the suppression hearing showed that on September 1, 1980, at approximately 10:00 p.m., Sergeant Maurice Mietzner responded to a call from the manager of a movie theater in Kankakee, Illinois, requesting assistance in removing persons who were causing a disturbance in the theater. When Sergeant Mietzner arrived at the theater he found respondent arguing with the manager. The manager told the officer that he wanted to sign a complaint against respondent for disturbing the peace. Sergeant Mietzner tried to get respondent and the manager to settle the matter, but when respondent continued to yell and scream in the theater, the officer arrested respondent for disturbing the peace. At the time of his arrest, respondent had in his possession a purse that

was strapped over his shoulder.[1] Upon arresting respondent, Sergeant Mietzner did not search respondent or seize the purse. Instead, the officer handcuffed respondent, placed him in a patrol car, and transported him to the police station (J.A. 7, 8, 9-10, 11, 13).

In the booking room, Sergeant Mietzner removed respondent's handcuffs and told respondent to take everything out of his pockets and place the items on the counter (J.A. 7, 10, 11-12, 13-14). According to Sergeant Mietzner, respondent emptied his pockets, and, after removing a package of cigarettes from his purse, respondent placed both the package and the purse on the counter (J.A. 12, 14).[2] Sergeant Mietzner patted the purse and, feeling something else, looked inside and found ten pills, which he believed were "black beauties," wrapped in cellophane. The pills were subsequently found to contain amphetamine (J.A. 12).

Sergeant Mietzner explained that his search of respondent's purse was undertaken in accordance with standard police booking procedures for a custodial search; when he arrests a woman he invariably examines the contents of her purse (J.A. 12, 16). The officer also stated that, in opening respondent's purse, he did not specifically expect to find a gun or drugs inside: "I didn't know what was inside of the purse. * * * [E]verything has got to be inventoried" (J.A. 15).

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[1] Respondent's accessory was variously described as a "handbag" (J.A. 7), a "shoulder bag" (J.A. 11-12), and a "purse" (J.A. 14-15).

[2] According to respondent, one police officer "grabbed" him while another took his purse and "threw it on the counter" (J.A. 7, 10).

2. In affirming the trial judge's order suppressing the amphetamine pills seized from respondent's purse, the appellate court rejected the State's alternative arguments that the search could be justified either as incident to a lawful arrest or as part of a routine inventory of respondent's personal effects, and held that the warrantless search of the purse violated the Fourth Amendment (J.A. 25-30).[3]

While acknowledging that, under this Court's decision in *United States* v. *Edwards*, 415 U.S. 800 (1974), "[a] search incident to arrest, if lawful at the time of the arrest, may be conducted later when the accused arrives at the place of detention" (J.A. 27), the court below believed that the subsequent decision in *United States* v. *Chadwick*, 433 U.S. 1 (1977),

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[3] The court first expressed the view that the State had waived the search incident to arrest argument by failing to raise it at the suppression hearing (J.A. 27), but the court nevertheless went on to address and decide this issue (J.A. 27-28). Contrary to the impression of the court below, the record shows that the State in fact did argue before the trial court that the search should be sustained as incident to respondent's arrest. In a brief filed in opposition to respondent's suppression motion, the State pointed out that Illinois law permits a search of the person incident to a lawful arrest, and, relying in part on *United States* v. *Robinson*, 414 U.S. 218 (1973), the State argued that the purse "was carried by the [respondent] as a matter of personal style to carry those articles that other men may put in their pockets or that women may put in a purse * * *. This was not a search of luggage, a briefcase, or a footlocker, but a search of [respondent's] person which extended to all of his personal belongings which he had on him at the time" (J.A. 19-20). Thus, the appellate court erred in concluding that the State failed to argue that the search of the purse could be justified as a search of the person incident to a lawful arrest. In any event, the state court reached and decided this issue; accordingly, this Court may also consider it. See *Jenkins* v. *Georgia*, 418 U.S. 153, 157 (1974); *Raley* v. *Ohio*, 360 U.S. 423, 436 (1959).

limited the *Edwards* rule to delayed searches of only the accused and his clothing (J.A. 27). In the court's view, *Chadwick* establishes a distinction between the person of an arrestee, on the one hand, and all possessions within the arrestee's control at the time of arrest, on the other: as to the arrestee's person, the mere fact of a lawful custodial arrest leads to a substantial diminution in the arrestee's legitimate expectations of personal privacy; the same is not true with regard to objects within the arrestee's control, as to which the arrestee retains his expectation of privacy even after arrest (J.A. 27). Moreover, the court said, the justification for a search incident to arrest dissipates once the police "gain exclusive control of the luggage or personal property not immediately associated with the arrestee, [because] there is no danger that the arrestee might gain access to the property to destroy evidence or to become armed" (J.A. 27-28). The court concluded that respondent had an expectation of privacy in his purse independent of that in his person and clothing and that the warrantless search of the purse was unreasonable: "After the accused has been secured, as in the case at bar, and the officer has no fear that the purse is a refuge for a weapon or other contraband, the contents of a closed purse, which are generally of a personal nature and subject to expectations of privacy, may not be searched and seized without exigent circumstances or a warrant" (J.A. 28). Because the purse was thought to be in the officer's "exclusive possession" and no exigent circumstances were present, the court held that the search could not be upheld as incident to respondent's arrest (*ibid.*).

As to the State's argument, in reliance on *South Dakota* v. *Opperman*, 428 U.S. 364 (1976), that the search of the purse could be justified under an inventory rationale, the court noted that the Illinois

Supreme Court, in *People* v. *Bayles*, 82 Ill. 2d 128, 411 N.E.2d 1346 (1980), had refused to apply *Opperman* in a case involving an inventory of the contents of an unlocked suitcase found in the defendant's possession at the time of arrest (J.A. 29). The court below concluded that respondent's privacy interest in his purse outweighed the justifications for an inventory described in *Opperman* (428 U.S. at 369). The court could see no possibility of potential harm presented by the purse because the officer testified that he had no fear for his safety at the time of the search (J.A. 29-30). Furthermore, the court believed that the other justifications for an inventory —preservation of the arrestee's property and protection of the police from claims of lost and stolen property—could have been achieved in a less intrusive manner, for example, "by sealing [the purse] within a plastic bag or box and placing it in a secured locker" (J.A. 30).

SUMMARY OF ARGUMENT

The Fourth Amendment permits law enforcement officers effecting a lawful arrest to search the person of the arrestee, including his clothing or a container such as a purse or wallet carried on or about his person, for weapons that could be used either to resist arrest or to escape and for evidence of crime that otherwise might be concealed or destroyed. While some searches that would be permissible incident to an arrest might be impermissible if remote in time and place from the arrest, the fact of a lawful arrest should suffice to permit the police, as part of a standard booking procedure, to conduct a more thorough search of an arrestee's clothing, wallet or purse at the police station prior to placing the arrestee in a detention facility. Such a search serves several purposes in addition to those served by a search at the

point of arrest: ascertaining or verifying the arrestee's true identity so that the authorities may know whom they are dealing with, preventing the introduction of contraband drugs and other dangerous materials into the facility, and permitting the police to inventory the arrestee's property not only to protect that property while in police custody but also to protect the police from false claims of lost or stolen property.

While we have chosen to address the reasonableness of a booking search by analyzing it separately as a traditional "search incident to arrest" and as a valid "inventory," these two theories overlap to a considerable extent. Under either theory, the validity of a search at the stationhouse of an arrestee's personal effects in the course of processing the arrestee prior to his being placed in a detention facility does not depend on the existence of a warrant or probable cause. That is so because such a search is justified by legitimate purposes that are largely unrelated to seeking out evidence of crime and also because there is no danger of arbitrary enforcement since such a search is generally made pursuant to a standard practice of the police department and thus the decision whether to search is not left to the discretion of the individual officer. Whether the search of respondent's purse is viewed as incident to his lawful arrest or as a routine inventory, we submit that the search was reasonable under the Fourth Amendment.

A. In *United States* v. *Edwards*, 415 U.S. 800 (1974), the Court held that in light of the reduced expectations of privacy that accompany a lawful arrest, it was permissible for the police to effect a warrantless seizure and search of a defendant's clothes while he was in custody at the city jail some ten hours after his arrest. The court below erred in concluding that this Court's decision in *United States*

v. *Chadwick*, 433 U.S. 1 (1977), limited the application of *Edwards* by permitting searches at the stationhouse of only the arresteee and his clothing and not of other personal effects, such as a purse, carried by the arrestee at the time of arrest.

It is true that *Chadwick* made clear that a warrantless search of luggage or similar property seized at the time of an arrest cannot be justified as incident to the arrest when the search is temporally and spatially removed from the arrest. But *Chadwick* did not limit the authority of the police, as part of a normal booking procedure, to conduct a more thorough search at the stationhouse of property such as a purse, which is "immediately associated with the person of the arrestee," and with respect to which an arrestee has reduced expectations of privacy as a result of the arrest itself. Thus, a search of a purse should be treated no differently for Fourth Amendment purposes than a search of the pockets of an arrestee's clothing.

Moreover, the state court erred in concluding that the search of a purse may not be justified as incident to arrest once the police gain "exclusive control" over the purse. As this Court recently pointed out in *New York* v. *Belton*, 453 U.S. 454, 462 n.5 (1981), the problem with the "exclusive control" theory is that it would invalidate virtually every search incident to arrest because, "by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his 'exclusive control.' " In any event, the authority to search a purse or similar property intimately associated with the person of the arrestee stems from the diminution in the arrestee's expectation of privacy in his person resulting from the arrest itself; thus, a search of such property should be upheld as incident to arrest whether it occurs at the scene of arrest or at the stationhouse.

B. In *South Dakota* v. *Opperman*, 428 U.S. 364 (1976), the Court held that it is reasonable for the police to conduct a routine inventory of the contents of a lawfully impounded automobile. We submit that it similarly is permissible for the police to search an arrestee's purse as part of a routine inventory of his personal effects prior to placing the arrestee in a detention facility. While a person may have a greater privacy interest in a purse than in an automobile, the concerns identified by the Court in *Opperman* apply with substantial force to both kinds of property in police custody. As in the case of an automobile, it is proper for the police to ascertain the contents of a purse—where a person is likely to keep money and other valuables—to safeguard the owner's property, to protect against false claims of lost or stolen items, and to protect the police against potential danger. It is also proper to check an arrestee's purse for identification information so that the authorities can determine whether the arrestee is wanted on other charges.

The court below rejected the inventory rationale in part because the officer in this case expressed no fear that respondent's purse contained a weapon. This was error. The permissibility of conducting a routine inventory should not depend on whether the facts of a particular case support one or more of the justifications underlying adoption of an inventory procedure. It is, after all, the routine nature of such inspections, which do not require the officer to make individualized determinations whether to take an inventory, that supports their reasonableness. See *Opperman*, *supra*, 428 U.S. at 374-376; *id.* at 382-384 (Powell, J., concurring). Moreover, the lower court also erred in concluding that the inventory was unreasonable because the police allegedly could have safeguarded respondent's property and protected

themselves against any false claims in a "less instrusive manner" by sealing and storing the purse. The reasonableness of a particular law enforcement practice does not turn on a mechanical "less intrusive manner" analysis. In any event, securing the property in the manner suggested by the court would not protect the police against claims of lost or stolen property to the same extent as an inventory, particularly one carried out in the presence of the owner. The approach suggested by the lower court would also make it more difficult for the police to confirm the true identity of the arrested person.

ARGUMENT

IT IS REASONABLE UNDER THE FOURTH AMENDMENT FOR OFFICERS WHO HAVE MADE A LAWFUL CUSTODIAL ARREST TO CONDUCT A WARRANTLESS SEARCH AT THE STATIONHOUSE OF THE ARRESTEE'S PERSONAL EFFECTS IN THE COURSE OF ADMINISTRATIVE PROCESSING OF THE ARRESTEE FOR POST-ARREST DETENTION

The Fourth Amendment question presented in this case involves the commonplace police practice of conducting a routine inspection of an arrestee's purse and other personal effects as part of the administrative booking procedure. The majority of lower courts that have considered the constitutionality of this practice have upheld it, under either a "search incident to arrest" or an "inventory" rationale. The warrantless search of respondent's purse would be permissible under either of these approaches, since this Court has recognized both a search incident to arrest and an inventory as exceptions to the Fourth Amendment's warrant requirement. See *United States* v. *Robinson*, 414 U.S. 218 (1973); *United States* v. *Edwards*, 415 U.S. 800 (1974); *South Dakota* v. *Opperman*, 428 U.S. 364 (1976).

We note that the permissible limits of a stationhouse search may differ somewhat depending on which theory is used to justify it. Thus, while a search incident to arrest rationale may not support a delayed search of luggage seized at the time of the arrest, it would support a thorough examination of all items, including purses or wallets, on or about the person of the arrestee. By the same token, while an inventory approach would permit the police to inspect the contents of various types of containers (including luggage) over which they have lawfully acquired custody, the degree of scrutiny that the police may give to individual items is less than in the case of a search incident to arrest.

Whether it is viewed as a search incident to arrest or an inventory, the search in this case was reasonable under the Fourth Amendment. Unlike the typical search for evidence of crime, which ordinarily must be justified by a warrant embodying a finding of probable cause by a neutral magistrate, the reasonableness of a search at the stationhouse of an arrestee's purse or similar personal effects found in the possession of the arrestee at the time of arrest turns on factors unrelated to those requiring probable cause. A booking search of an arrestee's personal effects, undertaken as part of the normal administrative processes following a lawful custodial arrest, is justified by legitimate governmental purposes that are largely unrelated to seeking out evidence of crime. Moreover, because there is no exercise of discretion by the officer in deciding whether to search (*i.e.*, every arrestee's purse is subjected to a search pursuant to standard police procedures) there is no danger of arbitrary enforcement.

The Illinois Appellate Court nevertheless held that the police must obtain a warrant before they may

search an arrestee's purse at the stationhouse in the course of booking the arrestee on criminal charges.[4] It is our submission that the decision below is based on a fundamental misunderstanding of the pertinent Fourth Amendment principles.

A. A Search At The Stationhouse Of An Arrestee's Purse And Other Effects Immediately Associated With The Person Of The Arrestee Should Be Upheld As Incident To A Lawful Arrest

1. It is well settled that a search incident to a lawful arrest is a valid exception to the warrant requirement of the Fourth Amendment. See *Robinson*, *supra*, 414 U.S. at 224. A search incident to arrest traditionally has been justified "by the reasonableness of searching for weapons, instruments of escape, and evidence of crime when a person is taken into official custody and lawfully detained." *Edwards*, *supra*, 415 U.S. at 802-803. See *Robinson*, *supra*, 414 U.S. at 234; *Chimel* v. *California*, 395 U.S. 752, 762-763 (1969).

In *Robinson*, the Court made clear that the breadth of the authority to conduct a search incident to a lawful arrest is the same regardless of the nature of the offense for which the suspect is being arrested. 414 U.S. at 234-235. Moreover, the Court concluded that the permissibility of such a search does not turn on the actual presence in each individual case of one of the justifications supporting the authority for a search incident to arrest. As the Court explained (*id.* at 235):

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[4] In *People* v. *Bean*, 107 Ill. App. 3d 662, 437 N.E.2d 1295 (3d Dist. 1982), petition for cert. pending, No. 82-948, the same court similarly held that the warrantless search of an arrestee's wallet during the booking process violated the Fourth Amendment.

> A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under the Amendment.

See also *New York* v. *Belton*, 453 U.S. 454, 461 (1981). Thus, the Court in *Robinson* upheld, as a valid search incident to arrest, the search of a cigarette package seized from the defendant's coat pocket following his arrest for driving after his license had been revoked, even though the officer did not express any subjective fear of the defendant and the cigarette package was not suspected to contain either a weapon or evidence of the crime for which the defendant had been arrested. 414 U.S. at 236; see *Belton*, *supra*, 453 U.S. at 461.

In *Edwards*, the Court ruled that it was permissible for the police, without first obtaining a warrant, to seize and search the defendant's clothing while he was in custody at the city jail approximately ten hours after his arrest. In so ruling, the Court noted (415 U.S. at 803) that in *Abel* v. *United States*, 362 U.S. 217, 239 (1960), it had upheld the search of belongings carried by the accused to the place of detention on the ground that a valid search of the property could have been made at the place of arrest, and there was no reason for a different result "when the accused decides to take the property with him, for the search of it to occur instead at the first place of detention when the accused arrives there, especially as the search of property carried by an accused to the

place of detention has additional justifications, similar to those which justify a search of the person of one who is arrested."

The Court in *Edwards* observed that the courts of appeals similarly had concluded that "both the person [of the arrestee] and the property in his immediate possession may be searched at the stationhouse after the arrest has occurred at another place and if evidence of crime is discovered, it may be seized and admitted in evidence." 415 U.S. at 803 (footnote omitted). The Court explained that "'[w]hile the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence.'" *Id.* at 808-809, quoting *United States* v. *DeLeo*, 422 F.2d 487, 493 (1st Cir. 1970) (footnote omitted). Accordingly, the Court held that as part of "the normal processes incident to arrest and custody," the police were entitled, "[w]ith or without probable cause, * * * not only to search Edwards' clothing but also to take it from him and keep it in official custody," which was the standard practice of the local police department. 415 U.S. at 804.[5]

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[5] The Court noted (415 U.S. at 804-805 n.6):

> Historical evidence points to the established and routine custom of permitting a jailer to search the person who is being processed for confinement under his custody and control. See, *e.g.*, T. Gardner & V. Manian, Principles and Cases of the Law of Arrest, Search, and Seizure 200 (1974); E. Fisher, Search and Seizure 71 (1970). While "[a] rule of practice must not be allowed * * * to prevail over a constitutional right," *Gouled* v. *United States*, 255 U.S. 298, 313 (1921), little doubt has ever been ex-

2. The Illinois Appellate Court recognized (J.A. 27) that the search of respondent's purse would have passed muster under the principles of *Edwards*. It concluded, however, that this Court's decision in *United States* v. *Chadwick*, 433 U.S. 1 (1977), limited the *Edwards* rule "by sanctioning only delayed searches of the accused and his clothing," and not of objects within the control of the accused at the time of arrest (J.A. 27). We submit that the state court misread the impact of *Chadwick* on the rule laid down in *Edwards*.

The Court in *Chadwick* held that the warrantless search of a footlocker at the federal building about 90 minutes after the defendants' arrests violated the Fourth Amendment. In reaching that result, the Court explained why the search of the footlocker could not be justified as incident to the arrests (433 U.S. at 15; footnote omitted; emphasis added):

> [W]arrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the "search is remote in time or place from the arrest," *Preston* v. *United States*, 376 U.S., at 367, or no exigency exists. Once law enforcement officers have reduced luggage or other personal property *not immediately associated with the person of the arrestee* to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest.

Here, of course, unlike in *Chadwick*, the purse continued to be on respondent's person immediately prior

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pressed about the validity or reasonableness of such searches incident to incarceration. T. Taylor, Two Studies in Constitutional Interpretation 50 (1969).

to the time it was searched. Moreover, in contrast to respondent's purse, the double-locked footlocker in *Chadwick* apparently was not readily accessible even at the time of arrest and thus would not likely have been subject to a search incident to arrest even if the search had taken place contemporaneously with the arrest. Furthermore, in expressing the view that *Chadwick* bars the police from conducting a post-arrest search, at the place of detention, of any property in the possession of the arrestee other than his clothing, the state appellate court overlooked the significance of the qualifying phrase "not immediately associated with the person of the arrestee." The clear implication is that personal property that *is* "immediately associated with the person of the arrestee" may be subject to examination at the station-house as part of "the normal processes incident to arrest and custody." *Edwards, supra,* 415 U.S. at 804.

This reading of *Chadwick* is borne out by the Court's treatment of its earlier decisions in *Robinson* and *Edwards* (433 U.S. at 16 n.10):

> Unlike searches of the person, *United States* v. *Robinson,* 414 U.S. 218 (1973); *United States* v. *Edwards,* 415 U.S. 800 (1974), searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest. Respondents' privacy interest in the contents of the footlocker was not eliminated simply because they were under arrest.

While *Edwards* involved a search of the arrestee's clothing, *Robinson* involved the search of a container (a cigarette pack) being carried by the suspect at the time of his arrest and in the possession of the officer at the time it was searched. Items such as a purse

or a wallet, which ordinarily are carried on the person of an individual or kept within ready access at all times, equally are immediately associated with the person of the arrestee, and their search is similarly justified by virtue of the arrest itself and the reduced expectations of privacy accompanying the arrest.[6]

3. The court below thus erred in concluding that, despite his lawful arrest, respondent had an expecta-

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[6] The courts of appeals consistently have concluded, even after *Chadwick*, that the search of an arrestee's wallet at the stationhouse may be upheld as incident to arrest. See, *e.g.*, *United States* v. *Sonntag*, 684 F.2d 781, 786 (11th Cir. 1982); *United States* v. *McEachern*, 675 F.2d 618, 622 (4th Cir. 1982); *United States* v. *Baldwin*, 644 F.2d 381, 384 (5th Cir. 1981); *United States* v. *Passaro*, 624 F.2d 938, 943-944 (9th Cir. 1980), cert. denied, 449 U.S. 1113 (1981); *United States* v. *Ziller*, 623 F.2d 562, 563 (9th Cir.), cert. denied, 449 U.S. 877 (1980); *United States* v. *Phillips*, 607 F.2d 808, 809-810 (8th Cir. 1979).

As the court below recognized (J.A. 28), several courts have also upheld searches of a defendant's purse at the stationhouse under a search incident to arrest rationale. However, the Ninth Circuit, in *United States* v. *Monclavo-Cruz*, 662 F.2d 1285 (1981), concluded in a similar situation that the warrantless search of a purse could not be justified as incident to arrest. The court noted that it had approved stationhouse searches of a defendant's wallet as an incident of a lawful arrest and it recognized that "there is a fine line between a wallet on the person and a purse within an arrestee's immediate control." *Id.* at 1290. But the court rejected the search incident to arrest argument because to hold otherwise, it believed, "would allow the police to seize everything within the passenger compartment of a car, take it to the stationhouse, and search it without probable cause [or] a warrant * * *." *Ibid.* Like the state appellate court in this case, the Ninth Circuit in *Monclavo-Cruz* failed to distinguish between property such as luggage that happens to be within the possession of the arrestee at the time of arrest, and property such as a purse or wallet that is by its nature associated with the person of the arrestee.

tion of privacy in his purse independent of and greater than that in his body and clothing. It simply makes no sense, for Fourth Amendment purposes, to impose an artificial distinction between the pockets of an arrestee's clothing and a purse that is worn or carried by the arrestee, which like a pocket is essentially an extension of the arrestee's person.[7] As the court remarked in a related context in *United States* v. *Graham*, 638 F.2d 1111, 1114 (7th Cir.), cert. denied, 450 U.S. 1034 (1981):

> The human anatomy does not naturally contain external pockets, pouches, or other places in which personal objects can be conveniently carried. To remedy this anatomical deficiency clothing contains pockets. In addition, many individuals carry purses or shoulder bags to hold objects they wish to have with them. Containers such as these, while appended to the body, are so closely associated with the person that they are identified with and included within the concept of one's person. To hold differently would be to narrow the scope of a search of one's person to a point at which it would have little meaning.

The reasons for permitting a routine search of the pockets of an arrestee's clothing at the stationhouse

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[7] In this connection, we note that several of the court of appeals' decisions cited with approval in *Edwards*, *supra*, 415 U.S. at 803-804 n.4, involved searches of the pockets of an arrestee's clothing at the stationhouse. See *United States* v. *Manar*, 454 F.2d 342 (7th Cir. 1971); *Cotton* v. *United States*, 371 F.2d 385 (9th Cir. 1967); *Rodgers* v. *United States*, 362 F.2d 358 (8th Cir.), cert. denied, 385 U.S. 993 (1966); *Grillo* v. *United States*, 336 F.2d 211 (1st Cir. 1964), cert. denied, 379 U.S. 971 (1965). In *Grillo*, the officers examined papers found in the defendant's wallet in the course of conducting a search of the person of the defendant as part of the booking procedure.

as an incident of the arrest and custodial detention also apply to searches of an arrestee's purse. Such searches are justified so that the police can determine whether the arrestee is carrying with him contraband, weapons, or other implements capable of facilitating an escape. In addition, it is entirely reasonable, as part of the administrative booking procedure, to inspect the contents of an arrestee's wallet or purse in order to ascertain or verify the identity of the person being incarcerated. See *State* v. *Scroggins*, 297 Minn. 144, 210 N.W. 2d 55 (1973). The standard law enforcement practice of seeking to determine with some reliability the identity of the person who has been arrested, as well as any aliases he may have employed, is a necessary, proper and expected consequence of a lawful arrest. Cf. *Hill* v. *California*, 401 U.S. 797, 803 & n.7 (1971) (noting that it is not uncommon for an arrested person to attempt to avoid arrest by using an alias and false identification). Among other purposes, an identity check enables the authorities to discover whether the arrestee is wanted on other charges; in addition to permitting execution of outstanding warrants, this information is of critical importance to the prosecutor in formulating a recommendation regarding the arrestee's release on bond. See *United States ex rel. Hines* v. *LaVallee*, 521 F.2d 1109, 1112 (2d Cir. 1975), cert. denied, 423 U.S. 1090 (1976).

4. The court below apparently recognized that an arrestee's purse may be searched at the scene of the arrest under the search incident to arrest doctrine. But the court believed that the justification for such a search evaporates once the police gain "exclusive control" over the purse because "there is no danger that the arrestee might gain access to the property to destroy evidence or to become armed" (J.A. 27-

28). But, as this Court recently noted in rejecting a similar argument, "under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced this article to his 'exlusive control.'" *New York* v. *Belton, supra*, 453 U.S. at 462 n.5. Here, as already noted, the purse remained on respondent's person until the moment before it was searched; thus, the search was proper under *Belton*. Moreover, because the arrestee's legitimate expectations of privacy in property immediately associated with his person are substantially diminished as a result of a lawful custodial arrest, the police should be entitled to search such property as an incident of the arrest regardless whether they have seized the property at the scene of the arrest or, as here, after the arrestee has been brought to the stationhouse.

If, as the state court below held, law enforcement officers are barred from searching purses and like containers at the stationhouse, the officers will be required to conduct a much more thorough search of an arrestee's personal effects at the scene of the arrest, thus exposing themselves to greater danger by having to remain at the scene.[8] The opportunity to search both the arrestee and the property immedi-

[8] In *United States* v. *Frankenberry*, 387 F.2d 337, 339 (2d Cir. 1967), cited with approval in *Edwards, supra*, 415 U.S. at 804 n.4, the court remarked that "[i]t is entirely proper and indeed good police practice to make a more careful and thorough search of a person who has been arrested once he is brought to the police station. There are obvious reasons why it is often advisable to conduct a more thorough search at a police station rather than on a public thoroughfare or in a public place and why such a search can be more safely and better conducted in surroundings which are completely under police control."

ately associated with his person "should not be more limited merely because there may have been reasons making a full search [at the scene] impractical or because the police opted for the less humiliating alternative of a search in the privacy of the station-house." 2 W. LaFave, *Search and Seizure*, § 5.3, at 306 (1978) (footnotes omitted).

B. The Fourth Amendment Permits Law Enforcement Officers To Inventory The Contents Of Containers Over Which They Have Lawfully Acquired Custody

1. In *South Dakota* v. *Opperman*, 428 U.S. 364 (1976), this Court held that the police may conduct a routine inventory of the contents of an automobile that has been lawfully impounded. The Court observed that the standard practice of securing and inventorying an automobile's contents had developed in response to three distinct needs: "the protection of the owner's property while it remains in police custody * * *; the protection of the police against claims or disputes over lost or stolen property * * *; and the protection of the police from potential danger * * *." *Id.* at 369. See also *Cady* v. *Dombrowski*, 413 U.S. 433, 446-447 (1973); *Harris* v. *United States*, 390 U.S. 234, 235-236 (1968); *Cooper* v. *California*, 386 U.S. 58, 61-62 (1967).

Although Fourth Amendment concerns clearly are implicated by the practice of inventorying the contents of an automobile (see *Opperman*, *supra*, 428 U.S. at 377 n.1 (Powell, J., concurring)), the reasonableness of this practice does not depend on the existence of probable cause. "The standard of probable cause is peculiarly related to criminal investigations, not routine, non-criminal procedures." *Id.* at 370 n.5. Moreover, the warrant requirement has no application to routine inventories of lawfully impounded automobiles, because a search warrant may be issued

only on probable cause and also because the policies underlying the warrant requirement do not come into play in the noninvestigative context of inventories. *Ibid.* "The officer does not make a discretionary determination to search based on a judgment that certain conditions are present. Inventory searches are conducted in accordance with established police department rules or policy and occur whenever an automobile is seized. There are thus no special facts for a neutral magistrate to evaluate." *Id.* at 383 (Powell, J., concurring). See *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 565-566 (1976). Thus, under *Opperman*, the determination whether an inventory was reasonable in a particular case turns on whether the police had lawful custody of the automobile and whether the inventory was conducted in a reasonable manner pursuant to standard police caretaking procedures.

2. The question in this case is whether the rationale of *Opperman* may be applied to uphold inventories of property other than automobiles over which the police lawfully acquire custody. In refusing to apply *Opperman* to the search of respondent's purse, the court below did not dispute that the police had lawful custody of the purse, which respondent was wearing over his shoulder at the time of his lawful arrest. Nor did the court question that the search of the purse was conducted pursuant to a standard procedure of the local police department—indeed, Sergeant Mietzner testified that his search was undertaken as part of a normal booking procedure (J.A. 12, 16).[9] Instead, the state court concluded that an

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[9] Apart from the policy of the local police department, Illinois law requires that "[a]n inventory of all instruments, articles or things seized on a search without warrant shall be given to the person arrested and a copy thereof delivered to

individual's privacy interest in the contents of a purse or other closed containers, such as luggage or a briefcase, outweigh the justifications for an inventory recognized in *Opperman*. In our view, the concerns that justify routine inventories of lawfully impounded automobiles apply with substantial force to inventories of other types of personal property properly taken into police custody, whether in the course of executing a lawful arrest or otherwise.

a. The need to protect the police "from potential danger" (*Opperman*, *supra*, 428 U.S. at 369) is at least as cogent in the context of a purse or other container taken to the stationhouse as in the automobile impoundment situation. Indeed, prohibiting law enforcement agents from inventorying the contents of containers taken into custody could expose not only the agents, but all persons in the building in which the agency has its offices, to potential danger if a weapon, explosive, or other dangerous instrumentality is concealed inside a container.

The court below brushed this consideration aside on the ground that respondent's purse presented "no possibility of potential harm" because Sergeant Mietzner testified that "he had no fear for his safety at the time of the search" (J.A. 29-30). But the per-

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the judge before whom the person arrested is taken * * *. If the person arrested is released without a charge being preferred against him all instruments, articles or things seized, other than contraband, shall be returned to him upon release." Ill. Ann. Stat. ch. 38, § 108-2 (Smith-Hurd 1980).

Federal law enforcement agencies follow similar inventory procedures. For example, following a custodial arrest, FBI agents conduct an itemized inventory of property in the possession of an arrestee. Similarly, DEA agents are instructed to inventory all property in the possession of an arrestee, although locked or sealed containers are inventoried as a unit rather than being opened.

missibility of conducting a routine inventory should not turn on whether the facts of a particular case support one or more of the justifications underlying adoption of an inventory procedure—indeed, the practice would not be "routine" if it did. Cf. *United States* v. *Robinson*, *supra*, 414 U.S. at 235-236 (validity of search not dependent on case-by-case assessment "of whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest"; thus, it was "of no moment" that the officer "did not indicate any subjective fear of the [defendant] or that he did not himself suspect that [defendant] was armed").

Moreover, just because the officer in this case did not express a subjective fear for his safety does not mean that no potential danger was presented and does not detract from the reasonableness of conducting an inventory as a routine practice.[10] As in the case of impounded automobiles, the occasional danger that may exist when containers are taken into custody "cannot be discounted entirely. * * * The harmful consequences in those rare cases may be great, and there does not appear to be any effective way of identifying in advance those circumstances or classes of [container] impoundments which represent a greater risk." *Opperman*, *supra*, 428 U.S. at 378 (Powell, J., concurring).[11] A rule allowing the police to in-

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[10] The fact that the officer did not suspect that respondent's purse contained a weapon or drugs (J.A. 14-15) supports the State's contention that the search was undertaken as part of a routine booking procedure and not as a pretext to search for evidence of criminal conduct.

[11] Cf. *Robinson*, *supra*, 414 U.S. at 234 (footnote omitted), where the Court refused to assume "that persons arrested for the offense of driving while their licenses have been revoked are less likely to possess dangerous weapons than those arrested for other crimes."

ventory the contents of impounded containers would enable the police to ensure that containers in their custody are safe to handle and store.

b. The court below also erred in concluding (J.A. 30) that the inventory constituted an unreasonable search because the two other objectives identified in *Opperman*—preservation of the owner's property while it remains in custody and protection of the police from claims of lost or stolen property—could have been achieved in a "less intrusive manner" by, for example, sealing respondent's purse inside a bag and placing it in a secured locker. The reasonableness of a particular law enforcement practice does not turn on a mechanical "less intrusive manner" analysis. As this Court has stated, the fact that a valid law enforcement objective "might, in the abstract, have been accomplished by 'less intrusive' means does not, by itself, render the search unreasonable." *Cady* v. *Dombrowski*, *supra*, 413 U.S. at 447. "The logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-seizure powers." *United States* v. *Martinez-Fuerte*, *supra*, 428 U.S. at 557 n.12.

In any event, securing the property in the manner suggested by the court would not insulate the police from false claims of lost or stolen property to the same extent as inventorying the contents of a container, particularly where the inventory is witnessed by the owner. Such a procedure serves to establish for both the owner and the police what is in the container, thus resolving potential problems. As Justice Powell, concurring in *Opperman*, noted (428 U.S. at 378; footnote omitted), "[s]ociety * * * has an important interest in minimizing the number of false claims filed against police since they may diminish the community's respect for law enforcement gen-

erally and lower department morale, thereby impairing the effectiveness of the police." At the same time, if property is damaged or lost, the inventory helps to assure that the owner receives proper compensation.

3. At bottom, the decision below appears to be grounded on the view that inventories of automobiles may be distinguished from inventories of containers because an individual has a greater expectation of privacy "in closed personal containers than in vehicles" (J.A. 29). In the context of determining the applicability of the warrant requirement to investigative searches based on probable cause, this Court has indicated that a person's privacy interest in luggage or similar containers is greater than in an automobile. See *United States* v. *Ross*, No. 80-2209 (June 1, 1982), slip op. 13; *Arkansas* v. *Sanders*, 442 U.S. 753, 761 (1979); *United States* v. *Chadwick*, *supra*, 433 U.S. at 13. But these privacy concerns have little relevance in the case of a routine inspection of the contents of a container for purposes unrelated to seeking evidence of crime.[12]

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[12] Although the Court in *Opperman* (428 U.S. at 367-368) noted the reduced expectation of privacy that attaches to automobiles, the Court did not suggest that the inventory rationale is inapplicable outside the automobile context. Indeed, a number of the lower court decisions cited with approval in *Opperman* (428 U.S. at 371-372) involved inventories of the contents of a container found during an inventory of an automobile. See *United States* v. *Mitchell*, 458 F.2d 960 (9th Cir. 1972) (sample case); *United States* v. *Lipscomb*, 435 F.2d 795 (5th Cir. 1970), cert. denied, 401 U.S. 980 (1971) (suitcase); *Lowe* v. *Hopper*, 400 F. Supp. 970 (S.D. Ga. 1975) (sealed envelope in plastic pouch); *State* v. *Tully*, 166 Conn. 126, 348 A.2d 603 (1974) (paper bag and knapsack); *People* v. *Sullivan*, 29 N.Y.2d 69, 272 N.E.2d 464 (1971) (briefcase); *State* v. *Montague*, 73 Wash. 2d 381, 438 P.2d 571 (1968) (paper bag).

The fact that a person may have a substantial privacy interest in the contents of a container such as a purse does not detract from the reasonableness of inventorying the purse's contents. "A purse is precisely the place where * * * money and valuables * * * would normally be found." *People* v. *Bullwinkle*, 105 Cal. App. 3d 82, 89, 164 Cal. Rptr. 163, 167 (2d Dist.), appeal dismissed, 449 U.S. 988 (1980). Thus, as in the case of an automobile, it seems to us perfectly proper for the police to ascertain the contents of a purse or similar container to safeguard the owner's property, to protect against false claims of lost or stolen items, and to satisfy safety concerns. In addition, as noted earlier (see pages 18-19, *supra*), inspection of the contents of a wallet or purse also is necessary to ascertain or confirm the identity of the arrested person. See 2 W. LaFave, *Search and Seizure*, *supra*, § 5.3, at 306-307.

For these reasons, we believe that the examination of the contents of respondent's purse was justified as an inventory of property lawfully in the custody of the police as an incident of respondent's arrest and incarceration. This does not mean that police are without limits as to the scope of a permissible inventory. As in *Opperman*, a container inventory should be upheld only where it is shown to be consistent with established police procedures, and where it is not a pretext concealing an investigatory motive. Moreover, the degree of scrutiny given to individual items should not be more than is required to produce an itemized list; it should not, for example, involve examining the contents of "materials such as letters or checkbooks that 'touch upon intimate areas of an individual's personal affairs,' and 'reveal much about a person's activities, associations and beliefs.' " *Opperman*, *supra*,

428 U.S. at 380 n.7 (Powell, J., concurring), quoting *California Bankers Association* v. *Shultz*, 416 U.S. 21, 78-79 (1974) (Powell, J., concurring). See 2 W. LaFave, *Search and Seizure*, *supra*, § 5.3, at 307 n.29. Such a searching examination would suggest that the inventory was a pretext for an investigative search. There is, however, nothing in the present record to indicate that Sergeant's Mietzner's examination of the contents of respondent's purse was for any purpose other than to determine the nature of the property taken into lawful custody.

CONCLUSION

The judgment of the Illinois Appellate Court should be reversed.

Respectfully submitted.

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